

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 04-10438-RGS

KENT GARVEY, on behalf of himself and
all others similarly situated

v.

JAMES ARKOOSH, SAMUEL BELZBERG,
PETER KLEIN and DIOMED HOLDINGS, INC.

ORDER ON MOTION FOR
RECONSIDERATION

July 21, 2004

STEARNS, D.J.

The motion to reconsider is DENIED. The plaintiff has failed to provide evidence that he has published, as the statute requires, in an appropriate national business publication or wire service, less than 20 days after the filing of the Complaint, a notice advising members of the purported plaintiff class of the pendency of the action. See 15 U.S.C. § 78u-4(a)(3)(A).

Moreover, even if plaintiff had demonstrated compliance with the statutory notice requirements, he has identified only himself as a potential class member. Presented with a class of one, there are no means by which the court could discern whether the plaintiff nominee is the class member “most capable of adequately representing the interests” of the class as a whole. 15 U.S.C. § 78u-4(a)(3)(B).

ORDER

For the foregoing reasons, the Motion for Reconsideration is DENIED.

SO ORDERED.

/s/ Richard G. Stearns

UNITED STATES DISTRICT JUDGE